

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. 4:12-CV-23-FL

JOHNNY PEARSON,

Plaintiff,

v.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.

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ORDER

This matter is before the court on plaintiff's motion for attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) ("EAJA") (DE 30). Defendant responded in opposition, asserting that the motion was untimely. On December 10, 2013, the court directed plaintiff through counsel to file a reply addressing the government's argument in opposition within fourteen (14) days of the date of the court's order. Plaintiff did not file a reply as directed. In this posture the matter is ripe for ruling.

Under the EAJA, "[a] party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses. . . ." 28 U.S.C. § 2812(d)(1)(B). "An EAJA application may be filed until 30 days after a judgment becomes 'not appealable'—i.e., 30 days after the time for appeal has ended." Shalala v. Schaefer, 509 U.S. 292, 302 (1993). "[I]n a civil case to which a federal officer is a party, the time for appeal does not end until 60 days after 'entry of judgment.'" Id. (quoting Fed. R. App. Proc. 4(a)(1), (7)).

In this case, the court entered judgment on June 26, 2013, remanding to the Commissioner for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g). (DE 27). A sentence four remand is a final judgment for purposes of EAJA fee applications. See Schaefer, 509 U.S. at 301-02. Accordingly, the time to appeal this judgment expired sixty (60) days thereafter, on August 26, 2013, and plaintiff had until thirty (30) days after that, until September 25, 2013, to file an EAJA application. Plaintiff, however, did not file his application until November 8, 2013. Therefore, plaintiff's application is untimely and must be denied on this basis.

SO ORDERED this the 10th day of February, 2014.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN  
United States District Judge